UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Case No. 09-45162

SOMERSET 2002, LLC, Chapter 11

Debtor. Judge Thomas J. Tucker
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ORDER REQUIRING DEBTOR TO AMEND DISCLOSURE STATEMENT

On July 24, 2009, Debtor filed a plan and disclosure statement, in a document entitled "Debtor's Combined Disclosure Statement and Plan of Reorganization" (Docket # 26). The Court cannot yet grant preliminary approval of the disclosure statement contained within this document ("Disclosure Statement"). The Court notes the following problems, which Debtor must correct.

First, it unclear whether Class I (treated in Article III, Paragraph 3.1 of the Plan on page 8) contains the treatment of the secured claim(s) of one or two entities (*i.e.*, it is unclear whether the City of Detroit has a separate claim from the Wayne County Treasurer). Debtor must treat the claim of each secured creditor in a separate class. Therefore, if these two entities are different, Debtor must have a class that consists of and treats only the $46,711.45 claim of the City of the Detroit, and another separate class that consists of and treats the $93,292.67 claim of the Wayne County Treasurer. If these two entities are the same, Debtor must make that clear.

Second, Article III, Paragraph 3.2 of the Plan on page 8 discusses the $1,000,000.00 secured claim of Wall Street Ventures, LLC. In this paragraph Debtor states:

> Pursuant to the attached Offer to Purchase the property to be sold for $1,100,000.000. Wayne County Treasurer's Office and City of Detroit hold a first priority claim of **$129,544.41** and $46,711.45, and thus Wall Street Ventures, LLC has a secured claim in the amount of $1,000,000. Member**s** of this class shall be paid as

> follows: Paid in full plus accumulated interest at the time of the closing of the sale of property to David Dorsey, III.

(Emphasis Added). There appear to be numerous mistakes and inconsistencies in this paragraph. First, the referenced $129,544.41 amount of the first priority claim of the Wayne County Treasurer's office is inconsistent with the stated amount of Wayne County Treasurer's claim in Paragraph 3.1 ($93,292.67). It is also inconsistent with the amount of the claim for "Wayne County" in the Liquidation Analysis ($92,292.67). It is also impossible, based on the stated amounts of the first priority claims of the City of Detroit and the Wayne County Treasurer and the sale price, that Wall Street Ventures, LLC has a secured claim in the amount of $1,000,000.

The calculation based on Debtor's figures would be as follows:

Sale price:	$1,100,000.00
Less first priority claim of Wayne County	93,292.67
Less first priority claim of City of Detroit	46,711.45
Balance	959,996.60

Under these calculations Wall Street Venture, LLC would only have a secured claim at most in the amount $959,996.60 (assuming no interest is paid to the City of Detroit and the Wayne County Treasurer) and an unsecured claim for the balance. *See* 11 U.S.C. § 506(a)(1). However, Debtor states in Article III, Paragraph 3.3 of the Plan on page 9 that there are no unsecured claims. Additionally, there is only one member of this class - Wall Street Ventures, LLC. The use of "members" is therefore inaccurate and confusing. Debtor must correct these problems. Debtor must also make any corresponding corrections in the Disclosure Statement (*e.g.*, Debtor must correct the description of the Classes on page 23 of the Disclosure Statement).

Third, Article V, Paragraph 5.1 of the Plan on page 12 states, in relevant part, regarding the "Effect of Confirmation": **"Discharge:** The confirmation of this Plan shall, and does her[e]by act to discharge and release the Claims of all Creditors against the Debtor, which shall constitute a full, total and complete statement with said Creditors and Interest Holders." This is an incorrect statement and must be deleted. Debtor's Plan is a liquidating plan. Where a corporation is liquidating and not continuing its business, claims and interests will not be discharged and creditors and shareholders will not be prohibited from asserting their claims against or interest in the debtor or its assets. *See* 11 U.S.C. §§ 1141(d)(3) and 727(a)(1). Debtor must correct this paragraph.

Fourth, Article IV, Paragraph 4.1 of the Plan on page 9 states that upon the sale of the property for $1,100,000.000 "all classes of creditors will be paid in full plus any accumulated interest." Given the amount of the claims stated in the Plan and Disclosure Statement, this appears to be impossible. Debtor must explain how this is possible.

Fifth, the Disclosure Statement does not provide any information regarding the background of Hana Karcho, the principal of the business, (*e.g.*, her education, work experience). Debtor must provide this information.

Sixth, the Disclosure Statement does not provide any information on the salary and fringe benefits Hana Karcho received prepetition. Debtor must provide this information.

Seventh, the Disclosure Statement on page 18 under the heading "Legal Relationships" states: "See Section II.D. for details regarding insider transactions." There is no Section II.D. Debtor must amend the Disclosure Statement to provide information about the legal relationships, if any, between the principal Hana Karcho and Debtor (*e.g.,* 100% equity owner of Debtor, lessor, lessee, creditor of the estate, debtor of the estate).

Eighth, Article IV.A. of the Disclosure Statement on pages 20-21 contains numerous apparent inconsistencies:

> a.) It states, in relevant part: “In the event that the Plan is not accepted by the Creditors or is not otherwise confirmed by the Bankruptcy Court, the Debtor believes that its assets would be liquidated: 1. Pursuant to a plan of liquidation under Chapter 11 of the Code[.]” The Plan proposed is a liquidating Plan. Therefore, it is unclear what the Debtor means by this statement.
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> b) It also states, in relevant part: “Debtor is confident that in a liquidation scenario, where the Debtor will be unable to generate any income going forward, unsecured creditors, which are being paid in full under this Plan, will not do any better in a Chapter 7 liquidation than in a chapter 11 bankruptcy.” However, Debtor states in Article III, Paragraph 3.3 of the Plan on page 9 and in numerous other places in the Plan and Disclosure Statement that there are no unsecured creditors. Debtor must make this statement consistent with other statements in the Plan and Disclosure Statement.
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> c) It also states: “Pursuant to the filed proofs of claim and scheduled claims, to which Debtor does not stipulate, there are secured claims equal to the value of the collateral, e.g. $1,077,571 approx. $93,292.67 for Wayne County Treasurer, $46,711.55 for the City of Detroit and the rest for Wall Street Ventures, LLC.” These figures do not add up. The value of the collateral is listed as $1,100,000.00. Wall Street Ventures, LLC’s claim is listed at $1,000,000.00. The claims of the Wayne County Treasurer and the City of Detroit add up to $140,004.22. It is unclear in the proposed Plan what the amount of $1,077,571.00 represents. It is inconsistent with any of the stated amounts Debtor has provided.[1]

Debtor must correct these problems.

Ninth, Section VI.C of the Disclosure Statement on page 24 states:

> Debtor proposed to continue its operations with the same management structure with reasonable compensation to Debtor’s principals, to the extent of available cash. Since the Petition Date, the principals have not received any compensation. It is contemplated that post petition, the principals will receive a reasonable salary and benefits but only to the extent of the available funds not necessary for plan payments.

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[1] The Court notes that $1,077,571.99 is the total of secured claims listed in Debtor’s Schedule D. However, that amount is based in part on Debtor listing the secured claim of the Wayne County Treasurer at $30,860.44. This is inconsistent with the amount of the claim for the Wayne County Treasurer listed in the Plan.

First, Debtor has only listed one principal - Hana Karacho. Therefore, the use of the plural "principals" is confusing. Second, the proposed Plan is a liquidating plan, in which an apartment building, the sole asset of the Debtor, is being sold. Rent from this asset was the sole source of income of the Debtor. According to Debtor, there is currently no cash flow and none is expected in the future. There is no building to manage, and no funds with which to pay management. Furthermore, even assuming that there was to be a cash flow with which to pay Hana Karacho, the statement that she would receive "a reasonable salary and benefits" is insufficient. Debtor would need to state, approximately at least, what salary and fringe benefits Ms. Karacho would receive. Finally, the statement that the principals will receive a reasonable salary is inconsistent with the statement in Paragraph II. B of the Disclosure Statement on page 18 that "[i]t is contemplated that postpetition, the principals will not received any reasonable salary and benefits." Debtor must correct these problems.

Tenth, Section VII of the Disclosure Statement on page 27 is titled "Legal Requirements." In the substantive text that follows the heading, Debtor mislabels this section as "VI." Debtor must correct this typographical error. Debtor must also change its reference to "VI.B.," in Section VII.C.1 of the Disclosure Statement on page 28 to "VII.B."

Eleventh, Debtor must amend Section VII.E concerning the "Effect of confirmation," so that it reads:

> *If the plan is confirmed by the Court:*
> *1. Its terms are binding on the debtor, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the plan.*
> *2. In the case of a corporation that is liquidating and not continuing its business, as in this case,*
> > *(1) Claims and interests will not be discharged.*
> > *(2) Creditors and shareholders will not be prohibited from*

> *asserting their claims against or interests in the debtor or its assets.*

Twelfth, Debtor's Disclosure Statement contains no information regarding guaranteed debt. Debtor must amend the Disclosure Statement to provide information on any guaranteed debt. If there is no guaranteed debt, the Disclosure Statement must state that.

Thirteenth, Debtor must itemize and then total the administrative claims in Article II, Paragraph 2.1 of the Plan on page 7. If Debtor does not know the amount of the claims, Debtor must at least estimate these claims.

Fourteenth, the Plan in Article II, Paragraph 2.1 (Group I) and in Article II, Paragraph 2.2 (Group II) on page 7, provides for payment of Administrative Expenses and Priority Creditors on the "Effective Date." Debtor must explain how, if the closing may not occur until December 1, 2009 (*see* Plan at Paragraph 4.1 on page 9), Debtor can pay Group I and Group II claims in full on the "Effective Date."

Accordingly,

IT IS ORDERED that Debtor must file, no later than **August 11, 2009**, an amended combined plan and disclosure statement which corrects the above stated problems.

IT IS FURTHER ORDERED that Debtor also must provide to Judge's chambers, no later than **August 11, 2009**, a redlined version of the amended combined plan and disclosure statement, showing the changes Debtor has made to "Debtor's Combined Disclosure Statement and Plan of Reorganization" filed July 24, 2009. Debtor must submit this redlined document to chambers electronically, through the Court's order submission program.

Signed on August 03, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge